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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0024**

State of Minnesota,
Respondent,

vs.

Perry Evan Helms, Jr.,
Appellant.

**Filed September 18, 2023
Affirmed
Johnson, Judge**

Nobles County District Court
File No. 53-CR-21-533

Keith M. Ellison, Attorney General, St. Paul, Minnesota; and

Braden Hoefert, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, William C. Lundy, Special Assistant County Attorneys, Slayton,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Johnson, Judge; and
Bjorkman, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Perry Evan Helms Jr. entered an *Alford* plea to attempted second-degree murder.
He later filed a postconviction petition in which he alleged that his attorney provided him

with ineffective assistance in connection with his guilty plea. The postconviction court denied the petition after conducting an evidentiary hearing. We affirm.

FACTS

According to the complaint, in June 2021, Helms's wife, S.L.H., and their infant child attended another child's birthday party at a residence in the city of Worthington. Helms went to the residence between 1:00 and 2:00 a.m. and asked about the whereabouts of his and S.L.H.'s child. He was told to leave, but he went into a bedroom where children were sleeping and grabbed his and S.L.H.'s child. Another person took the child from Helms with S.L.H.'s help. During the struggle, Helms put S.L.H. in a headlock, pressed a gun to her head, and said that he was going to kill her and then kill everyone else at the party and then kill himself. Helms pulled the trigger twice, but the gun did not fire. S.L.H. escaped from the headlock and ran away with others. Shortly thereafter, police officers found Helms near the home. Helms denied being armed during the incident, but officers found a .22-caliber revolver, with five loaded rounds and one empty chamber, on a lawn near where they found Helms.

The state charged Helms with six offenses: (1) attempted first-degree murder, in violation of Minn. Stat. § 609.185(a)(1) (2020); (2) attempted second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2020); (3) being an ineligible person in possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2) (2020); (4) second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2020); (5) violating an order for protection (OFP) while possessing a dangerous weapon, in violation of Minn. Stat. § 518B.01, subd. 14(d)(2) (2020); and (6) making

threats of violence with intent to terrorize, in violation of Minn. Stat. § 609.713, subd. 1 (2020). The state later voluntarily dismissed count 5 because the OFP had been dismissed before the incident.

In September 2021, the parties entered into a plea agreement. Helms agreed to enter an *Alford* plea¹ to count 2, attempted second-degree intentional murder, and the state agreed to dismiss the other charges as well as all charges in four other unrelated cases. In addition, the parties agreed that Helms would be sentenced to 153 months of imprisonment, unless it was discovered that he had unknown prior felony convictions.

At the plea hearing, the prosecutor recited the state's evidence in a manner that conformed to the allegations in the complaint. The prosecutor also stated that DNA testing of the handgun revealed genetic material consistent with Helms's DNA and that Helms had made telephone calls from jail that confirmed that he possessed a firearm. Helms acknowledged that he had reviewed the state's evidence, agreed that it was sufficient to prove his guilt beyond a reasonable doubt, and agreed that the jury likely would find him

¹ In *North Carolina v. Alford*, 400 U.S. 25 (1970), the United States Supreme Court held that a defendant's admission of "his participation in the acts constituting the crime" "is not a constitutional requisite to the imposition of criminal penalty." *Id.* at 37. The Minnesota Supreme Court expressly approved of *Alford* pleas in *State v. Goulette*, 258 N.W.2d 758 (Minn. 1977). The supreme court held that, in appropriate circumstances, a district court "may accept a plea of guilty by an accused even though the accused protests that he is innocent." *Id.* at 761. In Minnesota, an *Alford-Goulette* plea is valid if the defendant "agrees that evidence the State is likely to offer at trial is sufficient to convict" and if the district court independently determines that there is a strong factual basis for a finding of guilty and a strong probability that a jury would find the defendant guilty. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007).

guilty. At the sentencing hearing in October 2021, the district court imposed a sentence of 153 months.

In January 2022, Helms filed a notice of appeal from the judgment of conviction. In April 2022, he moved this court to stay the appeal and remand the case for postconviction proceedings, and this court granted the motion. In May 2022, Helms filed a postconviction petition in which he alleged that he had received ineffective assistance of counsel prior to and in connection with his guilty plea. He alleged that his attorney was ineffective in three ways: (1) by not adequately investigating a voluntary-intoxication defense, (2) by miscommunicating to him the terms of the plea agreement, and (3) by informing him that he could be sentenced to 100 years of imprisonment if he did not plead guilty. He requested an evidentiary hearing. In an accompanying memorandum, he argued that he should be allowed to withdraw his guilty plea. The state responded to Helms's petition with a two-page answer in which it denied the factual allegations and agreed that an evidentiary hearing was necessary.

The postconviction court conducted an evidentiary hearing in September 2022. The parties stipulated to the admission of three exhibits. Helms called two witnesses: Louis Kuchera, the attorney who represented him in the district court, and himself.

In February 2023, the postconviction court filed a 12-page order and memorandum in which it denied Helms's petition. In March 2023, this court dissolved the stay and ordered briefing.

DECISION

Helms argues that the postconviction court erred by denying his petition for postconviction relief. On appeal, he renews only the first two of the three claims of ineffective assistance that he alleged in his postconviction petition.

“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6. The Sixth Amendment right to counsel guarantees “the right to the *effective* assistance of counsel.” *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (emphasis added). In general, to prevail on a claim of ineffective assistance of counsel, a defendant must satisfy two requirements. “First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also State v. Cram*, 718 N.W.2d 898, 906-07 (Minn. 2006). “A defendant’s guilty plea may be constitutionally invalid if the defendant received ineffective assistance of counsel.” *Sames v. State*, 805 N.W.2d 565, 567 (Minn. App. 2011), *rev. denied* (Minn. Dec. 21, 2011).

The first requirement of *Strickland* is concerned with whether an attorney’s performance fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687-88; *State v. Vang*, 847 N.W.2d 248, 266-67 (Minn. 2014). The “objective standard is defined as ‘representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances.’” *Opsahl v.*

State, 677 N.W.2d 414, 421 (Minn. 2004) (quoting *State v. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993)). “Generally, we will not review an ineffective-assistance-of-counsel claim that is based on trial strategy.” *Vang*, 847 N.W.2d at 267.

The second requirement of *Strickland* “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). If a petitioner alleging ineffective assistance seeks to withdraw a guilty plea, he “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.*

If one of the *Strickland* requirements is not satisfied, a court need not consider the other requirement. *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017). In reviewing a post-conviction court’s denial of a claim of ineffective assistance of counsel, this court applies a clear-error standard of review to the post-conviction court’s factual findings, a *de novo* standard of review to its legal conclusions, and an abuse-of-discretion standard of review to its ultimate decision to deny relief. *Sanchez v. State*, 890 N.W.2d 716, 719-20 (Minn. 2017).

A.

We first consider Helms’s argument that the postconviction court erred by denying relief on his first claim, that Kuchera was ineffective by not adequately investigating a voluntary-intoxication defense.

In his postconviction petition, Helms alleged that Kuchera did not appropriately consider the evidence of his blood-alcohol level or his inability to remember the incident

due to his intoxication. Helms alleged further that Kuchera gave too much consideration to a police officer's body-worn camera's video-recording, which Kuchera believed showed that Helms's intoxication was not extreme.

At the evidentiary hearing, Kuchera testified as follows with respect to Helms's first claim. Shortly after he began representing Helms, he discussed with Helms his level of intoxication at the time of the incident. Helms told him that he had been smoking marijuana and drinking before the incident, but Kuchera did not recall Helms telling him how much he drank. However, Kuchera recalled that Helms's "alcohol level was around point one something," which he deemed to be not excessive. Kuchera discussed with Helms the defenses of voluntary intoxication and lack of intent to kill. Kuchera likely did not perform any legal research concerning the voluntary-intoxication defense while representing Helms but was fairly familiar with the subject based on prior experience. He told Helms that he believed that voluntary intoxication would not be a strong defense "based on his condition at the time of his arrest," as shown in the body-cam video-recording, which showed Helms's "ability to respond to questions." Kuchera also based his recommendation on "the specific nature of some of the allegations regarding what he said and what he did," which "were pretty deliberate." Kuchera also believed that Helms's lack of memory of the incident was inconsistent. However, he would have asserted a voluntary-intoxication defense on Helms's behalf if Helms had insisted on it.

In contrast, Helms testified as follows. When he first met with Kuchera, he told Kuchera that he had drunk a liter of rum and had smoked marijuana before the incident. He also told Kuchera that he could not remember details of the incident because of his

intoxication. Kuchera never told him that there is a voluntary-intoxication defense and never explained to him “why intoxication may or may not matter.” Rather, Kuchera told him that, because he “looked responsive” in the body-cam video-recording, his intoxication “was irrelevant to [the] case.” Helms would not have pleaded guilty if Kuchera had told him about a voluntary-intoxication defense.

The postconviction court found that Kuchera considered all relevant evidence concerning Helms’s intoxication. The postconviction court found that Helms was able to recall the incident in his initial meetings with Kuchera and claimed to lack recollection only when he was asked to provide a factual basis for a guilty plea. The postconviction court found that Kuchera “properly advised Petitioner of the defense” and “informed Petitioner that there were stronger defenses in the case based on [his] review of the body camera video, which indicated that Petitioner was not behaving in a manner that would be sufficiently intoxicated to successfully use the voluntary intoxication defense.” The postconviction court made a brief comment that Kuchera was “mistaken,” without explaining the nature of the mistake.

The postconviction court also found that, even if Kuchera’s performance was objectively unreasonable, Helms “failed to prove that Mr. Kuchera’s performance had an effect on his plea of guilty, as required by the second prong of the *Strickland* test.” The postconviction court found Helms’s “self-serving testimony” that he would not have pleaded guilty if he had been advised of the voluntary-intoxication defense to be “not credible” and further found that a voluntary-intoxication defense likely would not have prevailed at trial.

1. Performance

Helms argues that, for three reasons, the postconviction court erred by not finding that Kuchera's performance was deficient with respect to his first claim.

First, Helms contends that he would have been entitled to a jury instruction on a voluntary-intoxication defense if he had gone to trial. The postconviction court did not find that Helms would *not* have been entitled to an instruction on a voluntary-intoxication defense, and Kuchera did not testify that he had such a belief. Kuchera testified that he believed that Helms was unlikely to prevail by asserting the voluntary-intoxication defense. It was reasonable for Kuchera to focus on the ultimate goal: whether the voluntary-intoxication defense would lead to an acquittal.

Second, Helms contends that Kuchera misunderstood the requirements of the voluntary-intoxication defense. Helms emphasizes part of Kuchera's testimony when he was asked to "tell the Court what you know about the law surrounding voluntary intoxication." Kuchera responded by saying—accurately—that "if the person's sufficiently intoxicated as to not be able to form the requisite intent, it can be used as a defense." He added, "I believe the Defendant has the burden of kind of establishing intoxication and that it was sufficiently high that they were unable to form the requisite intent." Helms correctly notes that Kuchera's second statement is inaccurate because a defendant has the initial burden of producing evidence of voluntary intoxication but the state bears the ultimate burden of persuading the jury that the defendant possessed the requisite intent. *See State v. Wahlberg*, 296 N.W.2d 408, 418-19 (Minn. 1980); *see also State v. Hage*, 595 N.W.2d 200, 204-07 (Minn. 1999). The postconviction court apparently

believed that Kuchera's "mistaken" statement of the burden of proof was immaterial because the postconviction court also found that Kuchera "properly advised Petitioner of the defense." Given the evidence introduced at the evidentiary hearing, that finding is not clearly erroneous. Kuchera did not testify that his belief that the voluntary-intoxication defense was unlikely to be successful was because of the burden of persuasion. Rather, it appears that Kuchera simply determined that a jury was unlikely to believe that Helms was sufficiently intoxicated, regardless of the burden of persuasion. In addition, Kuchera's assessment of the relative strength or weakness of the voluntary-intoxication defense is a matter of trial strategy, which is entitled to great deference. *See State v. Doppler*, 590 N.W.2d 627, 635 (Minn. 1999) (concluding that attorney's decision to not request intoxication instruction "was a matter of trial strategy" and stating that court does "not review for competence matters of trial strategy").

Third, Helms contends that Kuchera did not conduct an adequate investigation into the law and the facts related to the voluntary-intoxication defense. With respect to legal matters, "[a]n attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance." *Hinton v. Alabama*, 571 U.S. 263, 274 (2014). But Kuchera was not ignorant of the law of voluntary intoxication. He accurately stated that intoxication may be relevant to intent. *See* Minn. Stat. § 609.075 (2020); *State v. Wilson*, 830 N.W.2d 849, 853 (Minn. 2013). He accurately understood that a defendant has the initial burden of introducing evidence of intoxication. *See Wahlberg*, 296 N.W.2d at 418-19. He was mistaken only in not clearly stating that the state has the ultimate burden

of proving that the defendant had the required intent to commit the alleged crime. *Id.* But that mistake does not establish that additional legal research would have changed Kuchera's assessment that the voluntary-intoxication defense was not a strong defense. The postconviction court found that Kuchera's advice to Helms was not objectively unreasonable. It appears that, as a practical matter, the burden of persuasion was not "fundamental" to the case. *See Hinton*, 571 U.S. at 274.

With respect to factual matters, the postconviction court found that Kuchera considered all relevant evidence. Helms contends that Kuchera did not ask him enough questions about the extent of his intoxication and how it affected him. Kuchera's reliance on other evidence is not unreasonable. The state may have offered the body-cam video-recording, and Helms's own statements about his intoxication might not have been admitted if he had chosen not to testify. It also appears that Kuchera doubted the sincerity of Helms's statements that he could not recall the incident. Kuchera testified that Helms initially recalled details of the incident and claimed to lack recollection only as the plea hearing approached. The postconviction court credited that part of Kuchera's testimony.

Thus, the postconviction court did not err by rejecting Helms's first claim on the ground that Kuchera's performance was not deficient. That finding is a sufficient basis for denying Helms's first claim.

2. Prejudice

Helms next argues that the postconviction court erred by finding that, if Kuchera's performance was deficient, he was not prejudiced by the deficiency with respect to his first claim.

The postconviction court noted Helms’s testimony that he would not have pleaded guilty if Kuchera had discussed the voluntary-intoxication defense with him. But the postconviction court stated that Helms’s self-serving testimony was impeached and is not credible. Helms asserts that the postconviction court did not explain its finding. But Helms did not explain why he would not have pleaded guilty. At the evidentiary hearing, he was asked a leading question regarding whether he would have pleaded guilty if he had known about the voluntary-intoxication defense, and he answered with only a one-word answer, “No.” The prejudice inquiry “focuses on a defendant’s decisionmaking.” *Lee v. United States*, 582 U.S. 357, 367 (2017). Helms’s testimony did not reveal any details of his decisionmaking. That the postconviction court was not convinced is understandable. The postconviction court’s credibility finding should not be disturbed.

Thus, the postconviction court did not clearly err by rejecting Helms’s first claim on the ground that, if Kuchera’s performance was deficient, Helms was not prejudiced. That finding is an additional basis for denying Helms’s first claim.

B.

We next consider Helms’s argument that the postconviction court erred by denying postconviction relief on his second claim, that Kuchera misinformed him that the agreed-upon sentence was a bottom-of-the-box sentence.

The parties stipulated to an exhibit consisting of a string of e-mail messages concerning plea negotiations. The prosecutor proposed that Helms plead guilty to count 2 and receive a 153-month sentence. Kuchera responded by proposing that Helms enter an *Alford* plea to count 2 and receive a bottom-of-the-box sentence. The prosecutor eventually

agreed to an *Alford* plea on count 2 but only if Helms received a presumptive sentence, which the prosecutor believed to be 153 months, stating that he would not agree to a bottom-of-the-box sentence. The parties later formalized their agreement to an *Alford* plea on count 2 and a 153-month sentence.

At the evidentiary hearing, Kuchera testified as follows with respect to Helms's second claim. Helms was willing to accept the state's initial offer that he plead guilty to attempted second-degree intentional murder and receive a presumptive 153-month sentence. Kuchera explained that he believed that he "could probably do a little better" by negotiating a shorter sentence and explained "the need to lay a factual basis," which Helms "indicated he might not be able to do." Kuchera suggested to Helms that they propose an *Alford* plea and a bottom-of-the-box sentence. Kuchera made such an offer, but the prosecutor did not agree. Kuchera and Helms discussed the possibility of asking the district court to impose a bottom-of-the-box sentence, but Helms "wanted to just go with the middle of the box as set in concrete instead of arguing." Kuchera believed that Helms understood that 153 months was a middle-of-the-box sentence, not a bottom-of-the-box sentence.

In contrast, Helms testified as follows with respect to his second claim. The state first offered a 165-month sentence. He declined the offer because he "didn't do it." Kuchera told him that "he could counter offer with the bottom-of-the-box and an *Alford* plea" but did not tell him the length of the bottom-of-the-box sentence. The state refused the offer, and he said that he would go to trial. Kuchera later told him that the state would agree to a 153-month sentence. He assumed that 153 months was a bottom-of-the-box

sentence because it was less than 165 months and Kuchera did not tell him that it was not a bottom-of-the-box sentence. If he had known that he was not receiving a bottom-of-the-box sentence, he would not have pleaded guilty because he “wasn’t guilty in the first place” and believed that he “could have got it lower.”

The postconviction court found that Kuchera’s testimony about plea negotiations was credible and that Helms’s testimony was not credible. The postconviction court found that Kuchera knew that 153 months was a middle-of-the-box sentence, not a bottom-of-the-box sentence, and that Kuchera communicated that fact to Helms. Accordingly, the postconviction court found that Kuchera’s performance was not deficient.

Helms contends that the postconviction court erred on the ground that Kuchera did not fully inform him about the plea offer he made to the state. He speculates that Kuchera did not know that 153 months was a middle-of-the-box sentence. This contention is contrary to the postconviction court’s express findings, which are based on its credibility determinations, which we will not second-guess. *See State v. Griffin*, 941 N.W.2d 404, 408 (Minn. 2020). Furthermore, Kuchera’s testimony is corroborated by the e-mail messages between him and the prosecutor, which show that both attorneys understood that the presumptive sentence was 153 months.

Helms also contends that Kuchera’s performance was deficient because he was vague in his communications with Helms, which caused Helms to believe that 153 months was a bottom-of-the-box sentence. This contention also is in conflict with the postconviction court’s findings, which are supported by the evidentiary record.

Thus, the postconviction court did not err by rejecting Helms's second claim on the ground that Kuchera's performance was not deficient.

In sum, the postconviction court did not err by denying Helms's postconviction petition.

Affirmed.